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IN THE

Supreme Court Of The United States

OCTOBER TERM, 1955

No. 738

A. A. BROOKS, PETITIONER

vs.

JACK'S COOKIE COMPANY, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FOURTH CIRCUIT

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Petitioner, A. A. Brooks, prays that a Writ of Certiorari issue to review so much of the judgment of the United States Court of Appeals for the Fourth Circuit, entered in this case on December 8, 1955, as reverses the judgment of the District Court as to the third cause of action.

OPINION BELOW

The opinion of the Court of Appeals is reported in 227 F. 2d 84; (A. 11).

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C., Sec. 1254(1). The Judgment of the Court of Appeals was entered on December 8, 1955.

QUESTION PRESENTED

Where a letter announcing the discharge of a tradesman from his employment is made the basis of an action for libel by the tradesman, should it be said as a matter of law that such letter does not convey a defamatory meaning where it goes beyond that which is necessary merely to announce the termination of the relationship, and by the additional words used leaves doubt in the minds of the recipients as to whether the discharge arose through no fault of the tradesman on the one hand; or, from some want of character, capacity, fitness or ability of the tradesman in any one of several particulars, on the other.

STATEMENT

The complaint in this suit contained three causes of action, only the third of which is the subject of this petition. It grew out of the termination of an agency contract between Jack's Cookie Company, a North Carolina Corporation, respondent, hereinafter called "Jack's", and A. A. Brooks, a citizen of South Carolina, petitioner, hereinafter called "Brooks". Under the terms of his oral contract with Jack's, Brooks was to set up a sales organization for the sale and distribution of Jack's products in South Carolina, North Carolina, Virginia and West Virginia. He entered upon the performance of his duties in January, 1952, visiting jobbers and distributors in said states and setting up a sales distribution system for Jack's. His efforts were successful and sales were greatly increased in the territory assigned to him. On September 1, 1953, Brooks was called to Jack's office in Charlotte, North Carolina, and discharged from his employment. Two days later, Mr. John W. Barton, president of Jack's, and acting on its behalf, composed and caused to be mailed to the "trade" a letter reading as follows:

> "This is to notify you that effective September 1, 1953, Mr. A. A. Brooks and his organization are no longer the sales representatives of Jack's Cookie Company, Charlotte, N. C.

"We are sorry that situations of this nature have to arise, but we have no hesitancy in doing that which in our judgment is best for the company, its distributors, representatives and customers. You will be contacted as soon as possible by an official representative of this company. It is our sincere desire to serve you in an efficient manner with quality products of which you can be proud. Your business is greatly appreciated and we will do everything in our power to continue to be worthy of it.

"Should there be any questions whatsoever concerning this situation, please do not hesitate to call Mr. Howard Walters at 3-9033, Charlotte, N. C."

In his third cause of action for libel, Brooks alleged that the letter in question maliciously and falsely imputed to him a want of capacity or fitness for engaging in his business as broker and sales representative; also that it imputed and insinuated that he was guilty of some unexplained dishonesty or misconduct in his business dealings with Jack's.

On April 30, 1954, Jack's moved for summary judgment on this cause of action, which motion was denied by the Honorable C. C. Wyche, United States District Judge, by opinion and order dated June 22, 1954, and reported in 122 F. Supp. 113. The case came on for trial on November 17, 1954. During the course of the trial, the Court dismissed Brooks' first and second causes of action, but refused to dismiss the third cause of action based on the alleged libelous letter. The case was submitted to the jury on the third cause of action and resulted in a verdict for Brooks in the sum of $17,500.00 actual damages. Thereafter, Jack's motion for a new trial was denied and Jack's appealed said judgment to the Court of Appeals for the Fourth Circuit. The Court of Appeals by its decision dated December 8, 1955, reversed the judgment of the District Court, holding that it was error to submit the libel charge to the jury because it was of the opinion that the letter in question did not convey a defamatory meaning.

REASONS FOR GRANTING THE WRIT

The Court of Appeals here holds that the letter circularized by Jack's Cookie Company to the cookie trade in the State of South Carolina and three other Southern states, announcing the discharge of A. A. Brooks, its sales representative and exclusive intermediary between itself and said trade, does not convey a libelous imputation of and concerning Brooks, in spite of the fact that the letter clearly goes beyond that which was necessary merely to announce the termination of relations with Brooks, and in spite of the fact that the additional words used relate to and are of doubtful meaning concerning the reasons for the discharge. While the Court of Appeals seems to hold that the letter is not ambiguous, it at the same time proceeds to construe it by stating what the letter would mean at its "worst". Under an unbroken line of decisions of the South Carolina Supreme Court since the case of *Duncan v. Record Publishing Co.* (1927), 145 S.C. 196, 143 S.E. 31, that court has held that unless the words used are on their face capable of only an innocent meaning, it cannot be said as a matter of law that the publication was not libelous, and it becomes a question of fact for the jury to decide under proper instructions which of two meanings, one innocent, the other injurious, was in fact conveyed to the hearers or readers at the time of the publication. *Nettles v. McMillan Petroleum Corp.* (1947), 210 S.C. 200, 42 S.E. 2d 57; *Reynolds v. Southern Grocery Stores* (1940), 192 S.C. 293, 6 S.E. 2d 470; *Leevy v. North Carolina Mut. Life Ins. Co.* (1937), 184 S.C. 111, 191 S.E. 811; *Merritt v. Great Atlantic & Pacific Tea Co.* (1936), 179 S.C. 474, 184 S.E. 145; *Jackson v. Record Pub. Co.* (1935), 175 S.C. 211, 178 S.E. 833; *Campbell v. Life & Cas. Ins. Co. of Tennessee* (1930), 155 S.C. 63, 152 S.E. 18; *McClain v. Reliance Life Ins. Co. of Pittsburgh, Pa.* (1929), 150 S.C. 459, 148 S.E. 478; *Sandifer v. Electrolux Corp.* (4th Cir, 1949), 172 F 2d 548; *Phillips v. Union Indemnity Co.*, (4th Cir., 1928), 28 F 2d 701; *Hubbard v. Associated Press*

(4th Cir., 1947), 123 F 2d 864; *Hartzog v. United Press Ass'n.* (4th Cir., 1953), 202 F. 2d 81.

Going now to the letter itself, it is of course obvious that it went further than that which was necessary merely to announce the dissolution or cessation of the business relationship between Brooks and Jack's. In the light of the additional words used, and in the light of the surrounding circumstances, can it be said as a matter of law that the letter could convey no harmful meaning? The complaint alleged that during a connection of some twenty months with Jack's, Brooks, as its sole sales representative had created an efficient organization for the sale and distribution of Jack's products; that this organization was comprised of distributors and jobbers whose services and facilities he had secured for the sale and distribution of Jack's products; and, that it was to these people that the allegedly libelous letter was sent. In the light of these circumstances, what was the logical effect of the letter upon these recipients, coming as it did on the heels of a successful and satisfactory relationship of some twenty months where Brooks and his organization had been the exclusive intermediary between these recipients and Jack's? While no harmful meaning may have been intended, is it not just as logical to assume from it that a *situation* had arisen between Brooks and Jack's respecting his duties as its sales representative; that while the precise nature of his offense or delinquency was not being disclosed, suffice it to say that it was of such magnitude as to require Jack's to fire him without hesitancy for its own good, as well as that of its distributors, representatives and customers; and, that if any recipient wanted to know the nature of his offense or delinquency that he might call a named company official? One of the recipients in fact stated that the letter made him think that Brooks had done something wrong, and wasn't "fittin" to work for Jack's. Such testimony was admissible under the circumstances. *Jenkins v. Sou. Ry. Co., et al.* (1924), 130 S.C. 180, 125 S.E. 912.

No contention is made here that the letter was libelous on its face requiring the Court as a matter of law to instruct the jury that such was the case. On the other hand, there is equally no reason to conclude that as a matter of law a libelous meaning was not conveyed to the recipients of the letter. Where neither can be said as a matter of law, the question under the law of South Carolina becomes one for the jury under proper instructions. *Duncan v. Record Pub. Co.*, supra; *Riley v. Askin & Marine* (1926), 134 S.C. 198, 132 S.E. 584.

It is the established law of South Carolina that words, whether oral or written, which injuriously affect one in his profession, trade, business or legitimate employment by imputing to him a want of capacity, skill, or fitness for engaging in the same are actionable, even though such words do not defame the person in the ordinary sense, or impute to him blame, moral turpitude, or even censure. *Duncan v. Record Pub. Co.*, supra; *Sandifer v. Electrolux* (4th Cir., 1949), 172 F. 2d 548. If the words used taken in their ordinary acceptation convey a degrading imputation, no matter how indirectly, they are libelous, and it matters not how artfully their meaning is concealed or disguised. *Duncan v. Record Pub. Co.*, supra; *Sandifer v. Electrolux*, supra. See also *Hartzog v. United Press Ass'ns.* (4th Cir., 1953), 202 F. 2d 81. It was upon these principles of law that the trial judge based an order and opinion denying Jack's motion for a summary judgment on this cause of action. (122 F. Supp. 113).

While the Court of Appeals relies upon its decision in *Phillips v. Union Indemnity Co.* (4th Cir., 1928), 28 F. 2d 701, in reversing the trial court here, it must be pointed out that in that case the plaintiffs did not rest their case upon a false charge of carelessness or business incapacity or inattention to duty, but rather sought to recover damages on the ground that their character for honesty and integrity had been attacked. In fact, there was apparently some effort on the part of the trial court to have them to amend their

complaint in this regard. On their failure to do so, the Court held that the publication in question did not charge them with dishonesty or lack of integrity. These facts, and this essential difference, was pointed out by the Court of Appeals in its decision of the Phillips case.

The Court of Appeals also cites the South Carolina cases of *Hubbard v. Furman University* (1907), 76 S.C. 510, 57 S.E. 478; *Hospital Care Corp. v. Commercial Casualty Insurance Co.* (1940), 194 S.C. 370, 9 S.E. 2d 796; and *Duncan v. Record Pub. Co.*, supra, in support of their decision here. Taking them up in order, the *Hubbard* case merely held, when the chaff is separated from the wheat, that the publication was not libelous on its face as a matter of law. In the *Hospital Care Corporation* case, the publication complained of was a pamphlet put out by the defendant as a part of its advertising; it referred to the insurance field generally and to no company in particular, naming none; it merely advised the public that several small companies had defaulted, and advised the public to investigate the financial condition of insurance companies before dealing with them. If direct reference had been made in such a pamphlet to the plaintiff, undoubtedly the result of the case would have been different. The real holding of the Court was that if the publication was defamatory, it was defamatory of a class.

Lastly, the *Duncan* case is Brook's fort and not Jack's. There, Robertson, co-defendant of Record Publishing Company, was an officer and owner of a controlling interest in the stock of the Columbia Railway, Gas and Electric Company. He was also president of a bank. Duncan was a state senator. He was appointed to the Canal Commission. The State of South Carolina was involved in a law suit against the Columbia Railway, Gas and Electric Company. The Canal Commission became vested with power to take control of the interest of the state in that law suit. Immediately upon the vesting of such power in the Canal Commission, Duncan wrote to Robertson soliciting a loan from his bank in the sum of $25,000.00. The loan was refused. About a

year later, when considerable controversy was going on in the press about the mentioned law suit, Duncan in the State Senate made a scathing attack on the owners of the Columbia Railway, Gas and Electric Company. Thereafter, the Record Publishing Company published the letter from Duncan to Robertson concerning the loan. Duncan sued Robertson and the Record Publishing Company for libel, alleging that by the publication of his letter, the defendants had accused him of soliciting a bribe. The Supreme Court of South Carolina held that it was a question for the jury to determine whether or not from the facts recited the publication of the letter was reasonably susceptible of conveying to the readers such a charge.

CONCLUSION

Certiorari should be granted.

Respectfully submitted,

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